



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MAR - 8 2007

Christopher T. Craig, Esq  
Sparks & Craig, LLP  
6862 Elm Street, Suite 360  
McLean, VA 22101

RE. MUR 5333  
John Swallow for Congress and  
Stanley R. de Waal, in his official  
capacity as treasurer

Dear Mr. Craig:

On February 9, 2007, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 2 U.S.C §§ 434(b)(3)(A) and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen  
Attorney

Enclosure  
Conciliation Agreement

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1  
2 **BEFORE THE FEDERAL ELECTION COMMISSION**

3  
4 In the Matter of )  
5 ) MUR 5333  
6 John Swallow for Congress and Stanley R. de Waal, )  
7 in his official capacity as treasurer )  
8

9 **CONCILIATION AGREEMENT**

10  
11 This matter was initiated by a complaint filed with the Federal Election Commission  
12 ("Commission") by Scott Clayton. The Commission found reason to believe that John Swallow  
13 for Congress and Stanley R. de Waal, in his official capacity as treasurer ("Respondents"),  
14 violated 2 U.S.C. §§ 441a(f) and 434(b)(3)(A).<sup>1</sup>

15 NOW, THEREFORE, the Commission and the Respondents, having participated in  
16 informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree  
17 as follows:

18 I. The Commission has jurisdiction over the Respondents and the subject matter of  
19 this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.  
20 § 437g(a)(4)(A)(i).

21 II. Respondents have had a reasonable opportunity to demonstrate that no action  
22 should be taken in this matter.

23 III. Respondents enter voluntarily into this agreement with the Commission

24 IV. The pertinent facts in this matter are as follows

25 1. John Swallow was a candidate for the Second Congressional District in Utah  
26

<sup>1</sup> The events that are the subject of this complaint occurred prior to November 6, 2002, the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub L 107-155, 116 Stat 81 (2002). Therefore, unless noted to the contrary, all references to statutes and regulations in this agreement pertain to those that were in effect prior to the implementation of BCRA.

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1 in the convention, primary and general elections in the 2002 election cycle.

2 2. John Swallow for Congress is a political committee within the meaning of  
3 2 U.S.C. § 431(4) and is an authorized committee of John Swallow within the meaning of  
4 2 U.S.C. § 431(6).

5 3. Stanley R. de Waal is the treasurer of John Swallow for Congress.

6 4. WinterHawk Enterprises LLC ("WinterHawk") is a limited liability company  
7 organized under the laws of the State of Utah. The members of WinterHawk are Dennis Gay,  
8 Gina Gay, Bodee Gay, Kim Gay, Haley Gay and Bryant Gay.

9 5. WinterFox LLC ("WinterFox") is a limited liability company organized under  
10 the laws of the State of Utah. The members of WinterFox are Evan Bybee, Tamra Bybee, Taige  
11 Bybee, Kara Davis, Shalane Kerr, Nicaill Bybee, Lant Bybee, Brenn Bybee and Keve Bybee.

12 6. Both WinterHawk and WinterFox elect to be treated as partnerships by the  
13 Internal Revenue Service and so their contributions are considered to be contributions from  
14 partnerships pursuant to 11 C.F.R. § 110.1(e). *See* 11 C.F.R. § 110.1(g)(2).

15 7. BMF #1, Ltd. is a limited partnership organized under the laws of the State of  
16 Utah. The general partner of BMF #1, Ltd. is BMF Management, LLC. Brent Facer and Jillyn  
17 Facer are the members of BMF Management, LLC.

18 8. A contribution by a partnership shall be attributed to the partnership and to  
19 each partner, in one of two ways: 1) in proportion to his or her share of the profits, according to  
20 instructions which shall be provided by the partnership to the political committee or candidate; or  
21 2) by agreement of the partners, as long as only the profits of the partners to whom the  
22 contribution is attributed are reduced (or losses increased), and these partners' profits are reduced

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(or losses increased) in proportion to the contribution attributed to each of them. 11 C.F.R.

§ 110.1(e). A contribution by a partnership shall not exceed the Act's limitations on contributions. *Id.*

9. WinterHawk, WinterFox and BMF #1, Ltd. are "persons" within the meaning of 2 U.S.C. § 431(11).

10. No person shall make contributions to any candidate and his authorized committees with respect to any election which exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A). No candidate or political committee shall knowingly accept any contribution in violation of the provisions of section 441a. 2 U.S.C. § 441a(f).

11. The treasurer of a political committee is responsible for itemizing any contribution from a person (other than a political committee) if the contribution exceeds \$200 per election cycle either by itself or when aggregated with other contributions from the same contributor. 2 U.S.C. § 434(b)(3)(A).

12. Respondents received a \$4,000 contribution check from WinterHawk dated March 29, 2002 in connection with the convention election. The contribution was attributed to Dennis Gay, Gina Gay, Bodee Gay and Kim Gay in the amount of \$1,000 each.

13. Respondents received a \$5,000 contribution check from WinterHawk dated June 21, 2002 in connection with the general election. The contribution was attributed to Dennis Gay, Gina Gay, Bodee Gay, Kim Gay and Haley Gay in the amount of \$1,000 each.

14. Respondents received \$4,000 from WinterHawk in connection with the convention election and \$5,000 from WinterHawk in connection with the general election, both in excess of the statutory limit of \$1,000 per election.

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15. Respondents did not disclose the contributions from WinterHawk.

16. Respondents received a \$5,000 contribution check from WinterFox dated March 28, 2002 in connection with the convention election. The contribution was attributed to Evan Bybee, Tamra Bybee, Taige Bybee, Kara Davis and Nicaïl Bybee in the amount of \$1,000 each.

17. Respondents received a \$5,000 contribution check from WinterFox dated June 28, 2002 in connection with the primary election. The contribution was attributed to Evan Bybee, Tamra Bybee, Taige Bybee, Nicaïl Bybee and Brenn Bybee in the amount of \$1,000 each.

18. Respondents received \$5,000 from WinterFox in connection with the convention election and \$5,000 from WinterFox in connection with the primary election, both in excess of the statutory limit of \$1,000 per election.

19. Respondents did not disclose the contributions from WinterFox.

20. Respondents received a \$1,000 contribution check from BMF #1, Ltd. dated March 30, 2002 in connection with the convention election. The contribution was attributed to Brent Facer.

21. Respondents received a \$1,000 contribution check from BMF #1, Ltd. dated June 3, 2002 in connection with the primary election. The contribution was attributed to Brent Facer.

22. Respondents did not disclose the contributions from BMF #1, Ltd.

V. 1. Respondents received excessive contributions from WinterHawk Enterprises LLC and WinterFox LLC in violation of 2 U.S.C. § 441a(f).

2. Respondents failed to report the receipt of contributions from WinterHawk

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Enterprises LLC, WinterFox LLC and BMF #1, Ltd. in violation of 2 U.S.C. § 434(b)(3)(A).

3. Respondents will cease and desist from violating 2 U.S.C. §§ 441a(f) and 434(b)(3)(A).

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Eight Thousand Dollars (\$8,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondents will amend their disclosure reports to indicate the receipt of the contributions from WinterFox LLC, WinterHawk Enterprises LLC and BMF #1, Ltd.

3. Respondents will amend their disclosure reports to indicate the receipt of a \$30,000 contribution from the Robert Browning Lichfield Family Limited Partnership on January 23, 2002, attributed to the following members of that Partnership: Robert B. Lichfield, Lana Patricia Lichfield, Lenae Lichfield, Loni Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield and Roger Lichfield. Respondents will also amend their disclosure reports such that they will no longer disclose the receipt of \$3,000 in contributions on January 23, 2002 from each of the following individuals: Robert B. Lichfield, Lenae Lichfield, Loni Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

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VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton  
General Counsel

BY:

Rhonda J. Vosdigh  
Rhonda J. Vosdigh  
Associate General Counsel  
for Enforcement

3/8/27  
Date

FOR THE RESPONDENTS:

Stanley R. de Waal  
(Name)  
(Position) TREASURER

1/22/2007  
Date

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